

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT EDWARD: [LAGROUE],

Plaintiff,

v.

STATE OF WASHINGTON *et al.*,

Defendants.

CASE NO. C19-1800-JCC

ORDER

This matter comes before the Court on Defendants King County Office of the Prosecuting Attorney and King County Superior Court's (collectively, the "King County Defendants") motion to dismiss (Dkt. No. 24) and Plaintiff's motion for default (Dkt. No. 30). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the King County Defendants' motion to dismiss (Dkt. No. 24) and DENIES Plaintiff's motion for default (Dkt. No. 30) for the reasons explained herein.

I. BACKGROUND

Plaintiff filed his complaint on November 6, 2019. (Dkt. No. 1 at 1–2.) Plaintiff's claims arise from events during his criminal prosecution and conviction 26 years ago. (*Id.* at 3.) Plaintiff alleges that after he dismissed his counsel, Defendant King County Superior Court refused to allow Plaintiff to proceed to trial without an attorney. (*Id.*) Instead, Defendant King County

1 Superior Court appointed a public defender to represent Plaintiff, against his wishes. (*Id.*)
2 Plaintiff brings claims for violations of his constitutional rights, including his rights to due
3 process of law, equal protection, and deprivations of the privilege and immunities clause of the
4 Fourteenth Amendment. (*Id.* at 3–4.) Plaintiff seeks \$27 million dollars in relief. (*Id.* at 4.)

5 **II. DISCUSSION**

6 **A. Plaintiff’s Third Motion for Default**

7 Entry of default is appropriate where a party has “failed to plead or otherwise defend” a
8 suit. Fed. R. Civ. P. 55(a). Plaintiff previously filed two motions for default. (Dkt. Nos. 14, 25.)
9 The Court denied the motions. (Dkt. No. 28.)¹ Plaintiff has now filed a third motion for default.
10 (Dkt. No. 25.) But, as the Court previously explained, the King County Defendants have
11 appeared and defended this suit. (*See* Dkt. Nos. 21; 23; 24; 28 at 2–3.) And Plaintiff’s claims
12 against Defendants Department of Public Defense and the State of Washington have been
13 dismissed. (Dkt. No. 28 at 4.) Thus, entry of default is not appropriate. *See* Fed. R. Civ. P. 55.
14 Therefore, Plaintiff’s motion for default (Dkt. No. 30) is DENIED.

15 **B. King County Defendants’ Motion to Dismiss**

16 A defendant may move for dismissal when a plaintiff “fails to state a claim upon which
17 relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must
18 contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its
19 face. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A claim has facial plausibility when a
20 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
21 defendant is liable for the misconduct alleged. *Id.* at 678. A court may grant dismissal based on
22 the statute of limitations “only if the assertions of the complaint, read with the required liberality,
23 would not permit the plaintiff to prove that the statute was tolled.” *TwoRivers v. Lewis*, 174 F.3d

24 ¹ The Court notes that not only has Plaintiff refused to accept service by mail of
25 Defendants’ filings, the Court’s orders sent to Plaintiff have been returned as undeliverable. (*See*
26 Dkt. No. 31.) The Court reminds Plaintiff that the Local Rules require him to maintain with the
Court an accurate mailing address. *See* W.D. Wash. Local Civ. R. 10(f).

1 987, 991 (9th Cir. 1999) (citation and quotation marks omitted). A dismissal under Federal Rule
2 of Civil Procedure 12(b)(6) “can [also] be based on the lack of a cognizable legal theory.”
3 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). Because Plaintiff has
4 proceeded *pro se*, he “must be held to less stringent standards than formal pleadings drafted by
5 lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

6 The King County Defendants move to dismiss on the ground that Plaintiff’s claims are
7 barred by the statute of limitations. (Dkt. No. 24 at 4–8.)² Plaintiff alleges that Defendants have
8 deprived him of his constitutional rights. (Dkt. No. 1 at 3–4.)³ Federal courts apply the forum
9 state’s statute of limitations governing personal injury actions to claims brought under § 1983.
10 *See Wilson v. Garcia*, 471 U.S. 261, 279–80 (1985). Thus, the applicable limitations period for
11 Plaintiff’s claims is three years. *See Wash. Rev. Code* § 4.16.080(2). Although state law provides
12 the applicable limitations period, federal law determines when the cause of action accrues. *See*
13 *TwoRivers*, 174 F.3d at 991. And “[u]nder federal law, a claim accrues when the plaintiff knows
14 or has reason to know of the injury which is the basis of the action.” *Id.*

15 Plaintiff’s claims arise out of Defendant King County Superior Court’s appointment of a
16 public defender and refusal to allow Plaintiff to proceed *pro se* in Plaintiff’s original criminal
17 proceedings. (*See* Dkt. No. 1 at 3–4.) These events occurred over 26 years ago. (*Id.*) Thus, it is
18 clear that these claims are well beyond the applicable three-year statute of limitations period. *See*
19 *Wash. Rev. Code* § 4.16.080(2). Therefore, Plaintiff has failed to state a claim upon which relief
20 may be granted. *See Fed. R. Civ. P.* 12(b)(6).

21 **III. CONCLUSION**

22 For the foregoing reasons, Plaintiff’s motion for default (Dkt. No. 30) is DENIED. The

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24 ² The King County Defendants also move to dismiss on the grounds they are entitled to
25 absolute judicial or prosecutorial immunity for the actions at issue in the complaint. (Dkt. No. 10
26 at 3–4.) Since dismissal is proper because Plaintiff’s claims are time-barred, the Court does not
reach these arguments.

³ Plaintiff has not responded to Defendants’ motion to dismiss.

1 King County Defendants' motion to dismiss (Dkt. No. 24) is GRANTED. "Dismissal without
2 leave to amend is improper unless it is clear . . . that the complaint could not be saved by any
3 amendment." *Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th
4 Cir. 2004). Under these facts, Plaintiff's complaint cannot be saved because the claims are time-
5 barred. Accordingly, the Court DISMISSES with prejudice Plaintiff's complaint.

6 DATED this 18th day of March 2020.

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10 John C. Coughenour
11 UNITED STATES DISTRICT JUDGE
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